**APPROVED DOCUMENT—**This document is approved by the Office of the President and Office of the General Counsel for use by the Facility.

**Cover Sheet and Instructions**

**GENERAL CONDITIONS**

|  |  |
| --- | --- |
| PURPOSE OF DOCUMENT: | Describes the rights, responsibilities, and relationships of the Contractor (the Design Builder) and the University. |
| CROSS-REFERENCES TO FACILITIES MANUAL (FM): | [I]:4.6.2 |
| CONTENTS: | General Conditions |
| FOR USE WITH: *(check if applicable)* |  | Long Form(LF) |  | Brief(BF) |  |  Multiple Prime(MP) |
|  | Design Build(DB) |  | CM at Risk(CM) |  | Job Order Contract(JOC) |
|  | Mini Form (MF) | √ | Brief Design Build (BFDB) |  |  |
| COMPLETED BY: |   | Filling In |  | Adding Text | √ | No Data Required |
| ITS USE IS: | √  | Required |  | Optional |

**NOTE:** To use the electronic file of this document, you must go to the “Tools” pull down menu in Microsoft Word, select “Options,” select the “View” tab, and then put a check in the box “Hidden text.” Most instructions and alternate language is displayed in hidden text. Do not print the hidden text for the final document.

**Completion Instructions:**

1. The General Conditions is a core document; therefore, no revisions are required or allowed. Revisions to the General Conditions are made and issued by the Office of the President.
2. Insert project identification information as indicated in the header. The header contains coded instruction within the brackets. The instructions and shading will disappear when the required information is typed.

**Modifications and Additions:**

1. Article 7.3 **Change Order Procedures**
2. **Add** Article 7.3.4.1, which contains content previously located in 7.3.4
3. **Add** Article 7.3.4.2, which includes a reduction of contractor fee in cases where there is a deductive change order – 5% from each Design Builder, Sub and 1st tier sub maxing out at 15%.
4. **Insert** the following language into Art 7.3.6.2 after *“…in accordance with Articles 7.3.2 and 7.3.3…”*

 “…plus Design Builder Fee as defined in 7.3.4.2 and…”

**Comments:**

None.

**END OF COVERSHEET AND INSTRUCTIONS**

# **GENERAL CONDITIONS**

# (Brief Design Build Contract)

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**RECITALS**

 The documents included in the Request for Proposals and the Design Builder’s Proposal, incorporated herein, and designated as part of the Contract Documents are provided by the University to establish the scope, level of quality and design intent, and the reporting procedures for the development and construction of the entire Project. The Design Builder shall comply with the Contract Sum, the Contract Time, the Preliminary Schedule or approved Contract Schedule as applicable, the Project Program, the performance specifications, the building massing, building heights and setbacks, public spaces, landscape design, and the general architectural character of the building described in the Criteria Documents. By incorporating the Design Builder’s Proposal as a part of this Contract, the University does NOT accept any provision of the Design Builder’s Proposal that is not in conformance with the criteria of the Request for Proposals.

In consideration of the mutual agreements, covenants and conditions set forth below, and the Recitals set forth above, the adequacy of which is hereby acknowledged, Design Builder and University agree as follows:

# **ARTICLE 1**

**GENERAL**

**1.1 BASIC DEFINITIONS**

1.1.1 APPLICABLE CODE REQUIREMENTS

The term "Applicable Code Requirements" means all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over University, Design Builder, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.

1.1.2 ARCHITECT OF RECORD

The term “Architect of Record” means the Design Professional identified in the Supplementary Conditions that is licensed in the State of California and employed or commissioned by the Design Builder to prepare design documents and construction documents.

1.1.3 CEQA

The term “CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 et seq.

1.1.4 COMPENSABLE DELAY

The term “Compensable Delay” means a delay that entitles the Design Builder to an adjustment of the Contract Sum and an adjustment of the Contract Time pursuant to Articles 7 and 8 of the General Conditions

1.1.4 CONSTRUCTION WORK

The term “Construction Work” means that portion of the Work consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

1.1.5 CONTRACT

The term “Contract” shall have the meaning identified in Article 3 of the Agreement.

1.1.6 CONTRACT DOCUMENTS

The term “Contract Documents” means all documents listed in Article 3 of the Agreement.

1.1.7 CONTRACT SUM

The term “Contract Sum” means the amount of compensation stated in the Agreement for the performance of the Work, as adjusted by Change Order.

1.1.8 CONTRACT TIME

The term “Contract Time” means the number of days set forth in the Agreement within which Design Builder must achieve Final Completion of the Work, as adjusted by Change Order.

1.1.9 DAY

The term “day,” as used in the Contract Documents, shall mean calendar day, unless otherwise specifically provided.

1.1.10 DEFECTIVE WORK

The term “Defective Work” means Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of University's Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

1.1.11 DESIGN BUILDER

The term “Design Builder” means the person or firm identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

1.1.12 DESIGN PROFESSIONAL

The term “Design Professional” shall mean individuals or entities that will provide Design Builder with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.

1.1.13 EXTRA WORK

The term “Extra Work” means Work beyond or in addition to the Work required by the Contract Documents.

1.1.14 PROJECT

The term “Project” means the total design and construction of the Work under the Contract and all other work, labor, equipment, and materials necessary to accomplish the Project . The Project may include design or construction work performed by University or by Separate Contractors.

1.1.15 PROJECT SITE

The term “Project Site” or “Project site” or “Site” or “site” means lands and facilities upon which the Work pertaining to physical construction operations is performed, including such access and other lands and facilities designated in the Contract Documents for use by Contractor.

1.1.16 SEPARATE CONTRACTOR

The term “Separate Contractor” means a person, or firm, under separate contract with the University performing other work related to the Project.

1.1.17 SUBCONTRACTOR

The term “Subcontractor” means a person or firm that has a contract with Design Builder or with a Subcontractor of the Design Builder to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

1.1.18 UNIVERSITY

The term “University” or “the University” means The Regents of the University of California, Owner of the Project.

1.1.19 UNIVERSITY’S BUILDING OFFICIAL

The term “University’s Building Official,” or “Certified Building Official,” means the individual the University has designated to act in the capacity of the “Building Official” as defined by the California Building Standards Code. The University’s Building Official will determine whether the Work complies with Applicable Code Requirements and will determine whether and when it is appropriate to issue a Certificate of Occupancy.

1.1.20 UNIVERSITY'S REPRESENTATIVE

The term “University's Representative” means the person identified as such in the Agreement.

1.1.21 UNIVERSITY’S RESPONSIBLE ADMINISTRATOR

The term “University’s Responsible Administrator“ means the person, or his or her authorized designee, who is authorized to execute the Agreement, Change Orders, Field Orders, and other applicable Contract Documents on behalf of the University.

1.1.22 WORK

The term “Work” means all labor, materials, equipment, tools, and services, including Design Professional services, and other requirements of the Contract Documents as modified by Change Order, whether completed or partially completed, provided or to be provided by Design Builder to fulfill Design Builder's obligations . The Work may constitute the whole or a part of the Project.

**1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS**

## 1.2.1. The University and Design Builder explicitly agree that all materials and documents developed in the performance of this Contract are the property of the University.

## **ARTICLE 2**

**UNIVERSITY**

**2.1 UNIVERSITY'S RIGHT TO STOP THE WORK**

2.1.1 If Design Builder fails to correct Defective Work as required by Article 12.2 of the General Conditions or fails to perform the Work in accordance with the Contract Documents, University or University's Representative may direct Design Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Design Builder.

**2.2 UNIVERSITY'S RIGHT TO CARRY OUT THE WORK**

2.2.1 If Design Builder fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the design or construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and, after receipt of written notice from University, fails within 2 days, excluding Saturdays, Sundays and legal holidays, or within such additional time as the University may specify, to correct such failure, University may, without prejudice to other remedies University may have, correct such failure at Design Builder's expense

# **ARTICLE 3**

**DESIGN BUILDER**

**3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN BUILDER; SINGLE POINT RESPONSIBILITY OF DESIGN BUILDER**

3.1.1 Design Builder is responsible for the design and construction of the Project and shall provide all services pursuant to this Contract in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project (including its contracting mode). The Design Builder shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. Design Builder shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Design Builder before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to University's Representative.

3.1.2 If Design Builder performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in Articles 3.1.1 above, without notifying and obtaining the written consent of University's Representative, Design Builder shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

**3.2 DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES**

3.2.1 Design Builder shall supervise, coordinate, and direct the Work using Design Builder's best skill and attention. Design Builder shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work, including, but without limitation, landscape and site work, utilities, and building systems.

3.2.2 Design Builder shall be responsible for inspection of all portions of the Work, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.

3.2.3 Design Builder shall employ a competent Superintendent satisfactory to University who shall be in attendance at the Project site at all times during the performance of the Construction Work.

**3.3 LABOR AND MATERIALS**

3.3.1 Unless otherwise provided in the Contract Documents, Design Builder shall provide and pay for all professional services, other services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other things necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**3.4 DESIGN BUILDER'S WARRANTY**

3.4.1 Design Builder warrants to University that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new, and free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents.

**3.5 TAXES**

3.5.1 Design Builder shall pay all sales, consumer, use, income, payroll and similar taxes for the Work or portions thereof provided by Design Builder.

**3.6 PERMITS, FEES, AND NOTICES**

3.6.1 Except for the permits and approvals which are to be obtained by University or the requirements with respect to which University is not subject as provided in the General Conditions, Design Builder shall secure, and pay for, all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Work. Design Builder shall deliver to University all original licenses, permits, and approvals obtained by Design Builder in connection with the Work prior to the final payment or upon termination of the Contract, whichever is earlier.

**3.7 APPLICABLE CODE REQUIREMENTS**

3.7.1 Contractor shall perform the Work in accordance with all Applicable Code Requirements.

**3.8 AS-BUILT DOCUMENTS**

3.8.1 Design Builder shall maintain one set of As-built drawings and specifications, which shall be kept up to date during the Work of the Contract. Prior to Final Completion each drawing and the specification cover shall be signed by Design Builder and dated attesting to the completeness of the information noted therein.

**3.9 SUBMITTALS AND ENVIRONMENTAL PRODUCT DECLARATIONS**

3.9.1 Design Builder shall review, approve, and submit to University's Representative, submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of University or of Separate Contractors. Design Builder shall perform no portion of the Work requiring submittals until the respective submittal has been reviewed by University's Representative and no exceptions have been taken by University's Representative. Design Builder shall not be relieved of responsibility for errors or omissions or deviations in submittals by University's Representative's review, acceptance, comment, or approval thereof. Design Builder shall prepare and keep current, to the reasonable satisfaction of University's Representative, a schedule of submittals that is coordinated with the Contract Schedule.

3.9.2 Design Builder shall comply with California Public Contract Code Section 3500 et seq., the Buy Clean California Act (“BCCA”).

.1 The term “Eligible Materials”, as used herein, shall mean the same as defined by the BCCA, and shall include at a minimum the following materials:

(1) Carbon steel rebar.

(2) Flat glass.

(3) Mineral wool board insulation.

(4) Structural steel.

.2 Compliance with the BCCA and this Article applies to all Eligible Materials for the Project.

.3 Design Builder shall submit to University a current facility-specific Environmental Product Declaration (“EPD”), Type III, as defined by the International Organization for Standardization (“ISO”) standard 14025, or similarly robust life cycle assessment methods that have uniform standards in data collection consistent with ISO standard 14025, industry acceptance, and integrity, for each Eligible Material proposed to be used on the Project.

.4 Eligible Materials installed on the Project by the Design Builder must comply with any standards to the extent established in the BCCA or by University, whichever is more stringent.  The facility-specific global warming potential for any Eligible Material must not exceed any existing maximum acceptable global warming potential for that material pursuant to the BCCA or by University, whichever is more stringent (“EM Standards”).

.5 Design Builder shall not install any Eligible Materials on the Project until Design Builder submits a facility-specific EPD for that material which demonstrates that the material complies with any existing EM Standards and this Article.  If a global warming potential has not been established for Eligible Materials, the Design Builder shall submit a facility-specific EPD for Eligible Materials where available. Design Builder shall be responsible for any losses, expenses, penalties or damages of any type incurred or sustained by University, including any tear out and replacement of Defective Work, which are caused by Design Builder’s failure to comply with the requirements of the BCCA or this Article.

**3.10 CONSTRUCTION DOCUMENTS**

3.10.1 Construction Documents

.1 Upon approval of the construction cost estimate, the Design Builder shall instruct the Architect of Record to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction.

.2 The Design Builder shall submit completed packages of the Construction Documents for review by the University of California, the California State Fire Marshal, the California State Architect, and Office of Statewide Health Planning and Development (OSHPD), where applicable at the times indicated on the Contract Schedule and as defined in the Scheduling Specification.

3.10.2 Field Engineering

.1 The Design Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation Work

**3.11 SCHEDULES REQUIRED OF DESIGN BUILDER**

3.11.1 The Preliminary Schedule provided with the Request for Proposal provides the Design Builder schedule information to illustrate all Contract Milestones and any anticipated overlap of phases. The Design Builder shall develop its required Contract schedules for review and approval by University based on and consistent with such Preliminary Schedule.

3.11.2 University's Representative will timely review the updated Contract Schedule or Fragnet Schedule submitted by Design Builder. If University's Representative determines that additional supporting data are necessary to fully evaluate the updated Contract Schedule or Fragnet Schedule, University's Representative will request such additional supporting data in writing.

3.11.3 If a Contract Schedule showing the Work completed in less than the Contract Time is accepted, Design Builder shall not be entitled to extensions of the Contract Time for Excusable Delays or Compensable Delays or to adjustments of the Contract Sum for Compensable Delays until such delays extend the Final Completion of the Work beyond the expiration of the Contract Time.

**3.12 USE OF SITE AND CLEAN UP**

3.12.1 Design Builder shall, during performance of the Work, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Design Builder. Design Builder shall remove all excess dirt, waste material, and rubbish caused by the Design Builder; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Work.

**3.13 CUTTING, FITTING, AND PATCHING**

3.13.1 Design Builder shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly and to allow the Work to receive or be received by work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.13.2 Design Builder shall not endanger the Work, the Project, or adjacent property by cutting, digging, or otherwise. Design Builder shall not cut or alter the work of any Separate Contractor without the prior consent of University's Representative.

**3.14 ACCESS TO WORK BY UNIVERSITY**

3.14.1 University, University's Representative, their consultants, and other persons authorized by University will at all times have access to the Work wherever it is in preparation or progress. Design Builder shall provide safe and proper facilities for such access and for inspection.

**3.15 ROYALTIES AND PATENTS**

3.15.1 Design Builder shall pay all royalties and license fees required for the performance of the Work. Design Builder shall defend suits or claims resulting from Design Builder's or any Subcontractor's infringement of patent rights and shall indemnify, defend and hold harmless University and University's Representative from losses on account thereof.

**3.16 DIFFERING SITE CONDITIONS**

3.16.1 If Design Builder encounters any of the following conditions at the site, Design Builder shall immediately notify the University's Representative in writing of the specific differing conditions before they are disturbed and before any affected Work is performed, and permit investigation of the conditions:

.1 Subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or if not indicated in this Contract, in the Information Available to Bidders; or

.2 Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

3.16.2 Design Builder shall be entitled to an adjustment to the Contract Sum and/or Contract Time as the result of extra costs and/or delays resulting from a materially differing site condition, if and only if Design Builder fulfills the following conditions:

.1 Design Builder fully complies with Article 3.16.1 above; and

.2 Design Builder fully complies with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.16.3 Adjustments to the Contract Sum and/or Contract Time shall be subject to the procedures and limitations set forth in Articles 7 and 8 of the General Conditions.

**3.17 INFORMATION AVAILABLE TO BIDDERS**

3.17.1 Any information provided pursuant to REQUEST FOR PROPOSALS is subject to the following provisions:

.1 The Design Builder may rely on written descriptions of physical conditions included in the information to the extent such reliance is reasonable.

.2 Other components of the information, including but not limited to recommendations, may not be relied upon by Design Builder. University shall not be responsible for any interpretation of or conclusion drawn from the other components of the information by the Design Builder.

**3.18 LIABILITY FOR AND REPAIR OF DAMAGED WORK**

3.18.1 Design Builder shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake or otherwise) prior to University’s acceptance of the Project as fully completed except that Design Builder shall not be liable for earthquake in excess of magnitude 3.5 on the Richter Scale, tidal wave, or flood, provided that the damages or losses were not caused in whole or in part by the negligent acts or omissions of Design Builder, its officers, agents or employees (including all Subcontractors and suppliers of all tiers). As used herein, “flood” shall have the same meaning as in the builder’s risk property insurance.

**3.19 INDEMNIFICATION**

3.19.1 Design Builder shall indemnify, defend and hold harmless University, University's consultants, University's Representative, University's Representative's consultants, and their respective directors, officers, agents, and employees, and any person or entity working under any of them (hereinafter collectively “Indemnitees”) from and against losses (including without limitation the cost of repairing defective work and remedying the consequences of defective work) arising out of, resulting from, or relating, in whole or in part, to the following:

.1 Breach of contract, negligence, or other misconduct of Design Builder, its Subcontractors, their officers, agents and employees, or any person or entity under Design Builder on the Project.

.2 The condition of the Project site (including any of the Work) at any time when the project site, in whole or in part, is in the control of Design Builder, its Subcontractors, their officers, agents and employees, or any person or entity under Design Builder on the Project.

3.19.2 Design Builder shall indemnify, defend, and hold harmless Indemnitees against all liability, demands, claims, costs, damages, injury including death, settlements, and expenses (including without limitation, interest and penalties) incurred by Indemnitees arising out of the performance of services or Design Builder’s other obligations under this Contract, but only in proportion to and to the extent such losses are caused by or result from (1) the negligent acts or omissions of Design Builder, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom Design Builder is responsible (collectively, “Indemnitor”); (2) the breach by Indemnitor of any of the provisions of this Contract; or (3) willful misconduct by Indemnitor.

**ARTICLE 4**

**ADMINISTRATION OF THE CONTRACT**

**4.1 ADMINISTRATION OF THE CONTRACT BY UNIVERSITY'S REPRESENTATIVE**

4.1.1 University's Representative will provide limited administration of the Contract as provided in the Contract Documents and will be the representative of University. University's Representative will have authority to act on behalf of University only to the extent provided in the Contract Documents.

**4.2 DESIGN BUILDER CHANGE ORDER REQUESTS**

4.2.1 Design Builder may request changes to the Contract Sum and/or Contract Time for Extra Work, materially differing site conditions, or delays to Final Completion of the Work.

4.2.2 Conditions precedent to obtaining an adjustment of the Contract Sum and/or Contract Time payment of money, or other relief with respect to the Contract Documents, for any other reason, are:

.1 Timely submission of a Change Order Request that meets the requirements of Articles 4.2.3.1 and 4.2.3.2 below; and

.2 If requested, timely submission of additional information requested by the University’s Representative pursuant to Article 4.2.3.3 below.

4.2.3 Change Order Request:

4.2.3.1 A Change Order Request will be deemed timely submitted if, and only if, it is submitted within 7 days of the date the Design Builder discovers, or reasonably should discover the circumstances giving rise to the Change Order Request, unless additional time is allowed in writing by University’s Representative for submission of the Change Order Request.

4.2.3.2 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment of the Contract Sum, Contract Time, and/or other monetary relief.

4.2.3.3 Upon request of University's Representative, Design Builder shall submit such additional information as may be requested by University's Representative for the purpose of evaluating the Change Order Request.

4.2.4 University's Representative will make a decision on a Change Order Request, within a reasonable time, after receipt of a Change Order Request. A final decision is any decision on a Change Order Request which states that it is final. If University's Representative issues a final decision denying a Change Order Request in whole or in part, Design Builder may contest the decision by filing a timely Claim under the procedures specified in Article 4.3.

4.2.5 Design Builder may file a written demand for a final decision by University’s Representative on all or part of any Change Order Request as to which the University’s Representative has not previously issued a final decision pursuant to Article 4.2.4 of the General Conditions; such written demand may not be made earlier than the 30th day after submission of the Change Order Request. Within 30 days of receipt of the demand, University’s Representative will issue a final decision on the Change Order Request. The University’s Representative’s failure to issue a decision within the 30-day period shall be treated as the issuance, on the last day of the 30-day period, of a final decision to deny the Change Order Request in its entirety.

**4.3 CLAIMS**

4.3.1 The term “Claim” means a written demand or assertion by Design Builder seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between University and Design Builder arising out of or related to the Contract Documents or the performance of the Work. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 4 shall not apply to the following:

.1 Claims respecting penalties for forfeitures prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine.

.2 Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.

.3 Claims by University, except as set forth in Articles, 4.5, 4.6, and 4.7 of the General Conditions.

.4 Claims respecting stop payment notices.

4.3.2 A Claim arises upon the issuance of a written final decision denying in whole or in part Design Builder's Change Order Request pursuant to Articles 4.2.4 and 4.2.5 of the General Conditions.

4.3.3 A Claim must include the following:

.1 A statement that it is a Claim and a request for a decision pursuant to Article 4.5 of the General Conditions.

.2 A detailed factual narrative of events fully describing the nature and circumstances giving rise to the Claim, including but not limited to, necessary dates, locations, and items of work affected.

**4.4 ASSERTION OF CLAIMS**

4.4.1 Claims by Design Builder shall be first submitted to University's Representative for decision.

4.4.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by University's Representative, Design Builder shall not cause any delay, cessation, or termination in or of Design Builder's performance of the Work, but shall diligently proceed with performance of the Work in accordance with the Contract Documents.

4.4.3 Design Builder shall submit a Claim in writing, together with all supporting data specified in Article 4.3.3 of the General Conditions, to University's Representative as soon as possible but not later than 30 days after the date the Claim arises under Article 4.3.2 of the General Conditions.

**4.5 DECISION OF UNIVERSITY'S REPRESENTATIVE ON CLAIMS**

4.5.1 University's Representative will timely review Claims submitted by Design Builder. If University's Representative determines that additional supporting data are necessary to fully evaluate a Claim, University's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. University's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the Claim or the deadline for furnishing such additional supporting data; provided that, if the amount of the Claim is in excess of $50,000, the aforesaid 30-day period shall be 45 days. Failure of University's Representative to render a decision by the applicable deadline will be deemed a decision denying the Claim on the date of the deadline, unless, upon receipt of a Claim, Contractor and University mutually agree to extend the time periods provided herein, or unless otherwise extended by law. The decision of University's Representative will be final and binding unless appealed in accordance with Articles 4.5.2, 4.6, and 4.7 of the General Conditions.

The University's Representative's decision on a Claim or dispute will include a written statement both identifying all disputed and undisputed portions of the Claim and substantially including the following:

“This is a decision under Article 4.5 of the General Conditions of your contract. If you are dissatisfied with the decision, and if you complied with the procedural requirements for asserting claims specified in Article 4 of the General Conditions of your contract, you may have the right to demand in writing an informal conference to meet and confer for settlement of any remaining issues in dispute, following which, if still dissatisfied, you may demand in writing a further resolution via nonbinding mediation, after which you have the right to litigate this decision. If you fail to take appropriate action within 30 days of the date of this decision, the decision shall become final and binding and not subject to further appeal.”

4.5.2 If either Design Builder or University disputes University’s Representative’s decision on a Claim, then, within 30 days after the decision of University’s Representative on the Claim, or, if no decision has been issued, within 30 days from the date of the applicable deadline in Article 4.5.1 for University Representative to render a decision, such party (the “Disputing Party”) must provide written notice demanding an informal conference to meet and confer. University shall schedule the conference within 30 days upon receipt of the notice demanding an informal conference. The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Contract by negotiation at the conference.

**4.6 MEDIATION**

4.6.1 Within 10 business days following the informal conference to meet and confer stated in Article 4.5.2, if the Claim or any portion of the Claim remains in dispute, the University shall provide a written statement identifying the disputed and undisputed portions of the Claim. Within 30 days of receipt of the statement, if either Design Builder or University disputes any portion of the Claim, then the Disputing Party must provide written notice to the non-disputing party demanding non-binding mediation. The Design Builder and the University shall share the associated costs equally and shall mutually agree to a mediator within 10 business days. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim, with each party bearing the fees and costs of its respective mediator. Mediation shall include, but not be limited to, neutral evaluation, a dispute review board, or other negotiation or evaluation through an independent third party or board. The Design Builder and the University may mutually agree to waive any individual mediation in writing and proceed to litigation pursuant to this Contract.

**4.7 LITIGATION**

4.7.1 Either party may provide a written notice of its election to litigate the Claim within 30 days after the mediation pursuant to Article 4.6.1, or, if the parties mutually agreed in writing to waive mediation, within 30 days after the agreement is signed by both parties.

4.7.2 If a notice of election to litigate is not given by either party within 30 days pursuant to Article 4.7.1, University's Representative's decision on the Claim will be final and binding and not subject to appeal or challenge.

4.7.3 Any litigation shall be filed in the Superior Court of the State of California for the County in which the contract was to be performed.

**ARTICLE 5**

**SUBCONTRACTORS**

**5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.1.1 Design Builder shall submit to the University’s Representative after selecting Subcontractors, an updated Expanded List of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor’s license numbers.

* + 1. The University has the right to request all documentation that supports the Design Builder’s selection of a Subcontractor. The University shall have the right of final approval as to the qualification(s) of a Subcontractor to perform its designated scope of work.
		2. The Subcontractors listed by Design Builder shall only be substituted in strict accordance with the “Subletting and Subcontracting Fair Practices Act” and upon the written consent of the University.

**ARTICLE 6**

**CONSTRUCTION BY UNIVERSITY OR BY SEPARATE CONTRACTORS**

**6.1 UNIVERSITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

6.1.1 University reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of the Work which have been deleted by Change Order. Design Builder shall cooperate with University's forces and Separate Contractors.

**ARTICLE 7**

**CHANGES IN THE WORK**

**7.1 CHANGES**

7.1.1 University may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to University. Design Builder shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order or Field Order.

**7.2 CHANGES DEFINITIONS**

7.2.1 A Change Order is a Contract Document (as shown in the Exhibits) which has been signed by both University and Design Builder, and states their agreement, as applicable, to any of the following: a change in the Work, if any; the amount of an adjustment of the Contract Sum, if any; the amount of an adjustment of the Contract Time, if any; and/or a modification to any other Contract term or condition.

7.2.2 A Field Order (as shown in the Exhibits) is a Contract Document issued by the University that orders the Design Builder to perform Work. A Field Order may, but need not, constitute a change in the Work and may, but need not, entitle Design Builder to an adjustment of the Contract Sum or Contract Time.

**7.3 CHANGE ORDER PROCEDURES**

7.3.1 Design Builder shall provide a Change Order Request and Cost Proposal pursuant to Article 4.2 of the General Conditions and this Article 7.3. Adjustments of the Contract Sum resulting from Extra Work and Deductive Work shall be determined using one of the methods described in this Article 7.3. Adjustments of the Contract Time shall be subject to the provisions in Article 8 of the General Conditions.

7.3.2 The term “Cost of Extra Work” as used in this Article 7.3 shall mean actual costs incurred or to be incurred by Design Builder and each Subcontractor regardless of tier involved, to the extent not otherwise disallowed under Article 7.3.3, and shall be limited to the following (to the extent the Design Builder demonstrates that the costs are both reasonable and actually incurred, if such costs have been incurred):

.1 Straight-time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.

.2 Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.

.3 Overtime wages or salaries, specifically authorized in writing by University's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.

.4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by University's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.

.5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by University's Representative. Such costs shall be charged at the lowest price available to the Design Builder but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to University and Design Builder shall make provisions so that they may be obtained.

.6 Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work pursuant to Article 7.3.2.5 above.

.7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by University's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current Equipment Rental Rates published by the California Department of Transportation for the area in which the work is performed. Such rental rates are found at <http://www.dot.ca.gov/hq/construc/equipmnt.html> . Design Builder shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.

.8 Additional costs of royalties and permits due to the performance of the Extra Work.

.9 Cost for revisions made necessary by University requested adjustments in University’s program or project budget. Such costs to be computed at the hourly rates specified in the Design Professional Rate Schedule in the Exhibits.

.10 The cost for Insurance and Bonds shall not exceed 2% of items .1 through .8 above.

University and Design Builder may agree upon rates to be charged for any of the items listed in this Article 7.3.2. Such agreed upon rates shall be subject to audit pursuant to Article 15.7 of the General Conditions. Design Builder shall promptly refund to University any amounts (including associated mark-ups) in excess of the actual costs of such items.

7.3.3 Cost of Extra Work shall not include any of the following:

.1 Supervision

.2 Superintendent(s).

.3 Assistant Superintendent(s).

.4 Project Engineer(s).

.5 Project Manager(s).

.6 Scheduler(s).

.7 Estimator(s).

.8 Small tools (Replacement value does not exceed $300).

.9 Office expenses including staff, materials and supplies.

.10 On-site or off-site trailer and storage rental and expenses.

.11 Site fencing.

.12 Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment.

.13 Data processing personnel and equipment.

.14 Federal, state, or local business income and franchise taxes.

.15 Overhead and Profit.

.16 Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2 above.

.17 Costs in Article 7.3.2.9 in excess of the hourly rates included in the Design Professional Rate Schedule.

7.3.4 The term “Design Builder Fee” shall mean the full amount of compensation, both direct and indirect (including without limitation all overhead and profit), to be paid to Design Builder for its own Work and the Work of all Subcontractors, for all costs and expenses not included in the Cost of Extra Work, whether or not such costs and expenses are specifically referred to in Article 7.3.3 above. The Design Builder Fee shall not be compounded.

7.3.4.1 For Work added by Design Builder via change order, the Design Builder Fee shall be computed as follows when the change impacts the Construction Work,

.1 Fifteen percent (15%) of the cost of that portion of the Extra Work to be performed by the Design Builder with its own forces.

.2 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor with its own forces, plus 5% for the Design Builder. Total combined Design Builder and Subcontractor fee shall not exceed 20%.

.3 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a sub-subcontractor with its own forces, or any lower tier of Subcontractor, plus 5% for the Subcontractor, plus 5% for the Design Builder. Total combined Design Builder, Subcontractor and all sub-subcontractor fee shall not exceed 25%.

.4 Notwithstanding the foregoing, the Design Builder Fee for additional Design Work under 7.3.2.9 of the General Conditions shall be 5% of the cost of such additional Design Work performed by a Design Professional. The cost of such additional Design Work shall be computed using the hourly rates in the Exhibits. The fee for the Design Professional Subcontractors shall be the overhead/profit rate specified in the Design Professional Rate Schedule.

7.3.4.2 For Work deleted by Change Order, the Design Builder Fee shall be computed as follows:

.1 Five (5%) of the cost of that portion of the Deleted Work to be performed by the prime contractor with its own forces.

.2 Five (5%) of the cost of that portion of the Work to be performed by a Subcontractor with its own forces, plus 5% for the prime contractor. Total combined Design Builder and Subcontractor fee shall not exceed 10%.

.3 Five (5%) of the cost of that portion of the Work to be performed by a sub-subcontractor with its own forces, or any lower tier of Subcontractor, plus 5% for the Subcontractor, plus 5% for the prime contractor. Total combined Design Builder, Subcontractor and all sub-subcontractor fee shall not exceed 15%.

7.3.5 Compensation for Extra Work shall be computed on the basis of one or more of the following:

.1 Where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of the Unit Prices to the quantities of the items involved.

.2 Where the Work involved is not covered by Unit Prices contained in the Contract Documents, by application of the Unit Prices agreed upon by University and Design Builder.

.3 Where the Work involved requires revisions inconsistent with approvals or instructions previously given by University, including revisions made necessary by adjustments in University’s program or project budget, by application of the hourly rates reflected in the Design Professional Rate Schedule.

.4 Where Articles 7.3.5.1, 7.3.5.2 and 7.3.5.3 above are not applicable, a mutually agreed upon lump sum supported by a Cost Proposal pursuant to Article 7.3.1 of the General Conditions.

.5 If University and Design Builder cannot agree upon a lump sum, by Cost of Extra Work plus Design Builder Fee applicable to such Extra Work.

7.3.6 For Work to be deleted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following:

.1 Unit Prices stated in the Contract Documents.

.2 Where Unit Prices are not applicable, a lump sum agreed upon by University and Design Builder, based upon the actual costs which would have been incurred in performing the deleted portions of the Work as calculated in accordance with Articles 7.3.2 and 7.3.3 plus Design Builder Fee as defined in 7.3.4.2 and supported by a Cost Proposal pursuant to Article 7.3.1 above.

7.3.7 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, a Design Builder Fee will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, a Design Builder Fee will be allowed only on the difference between the two amounts.

7.3.8 The Contract Sum will be adjusted for a delay if, and only if, Design Builder demonstrates that all of the following four conditions are met:

.1 Condition Number One: The delay results in an extension of the Contract Time pursuant to Article 8.3.1 of the General Conditions.

.2 Condition Number Two: The delay is caused solely by one, or more of the following:

.1 An error or omission in the Contract Documents caused by University and not as a result of Design Builder’s failure to conform to criteria documents, performance standards, Construction Documents, or Contract Documents; or

.2 The University's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Design Builder; or

.3 The University's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design Builder; or

.4 The failure of the University (including the University acting through its consultants, Design Professionals, Separate Contractors or the University's Representative) to perform any Contract obligation where the failure to so perform is not the result of any default or misconduct of the Design Builder.

.5 A materially differing site condition pursuant to Article 3.16 of the General Conditions.

.3 Condition Number Three: The delay is not concurrent with a delay that is caused by an event other than those listed in Article 7.3.8.2 above.

7.3.9 For each day of delay that meets all four conditions prescribed in Article 7.3.8 above, the Contract Sum will be adjusted by the daily rate included in the Agreement. Pursuant to Article 9.6.4 of the General Conditions, said daily rate shall not apply to delays occurring after Substantial Completion.

## **ARTICLE 8**

**CONTRACT TIME**

**8.1 COMMENCEMENT OF THE WORK**

8.1.1 The date of commencement of the Work shall be set forth in the applicable Notice To Proceed.

**8.2 PROGRESS AND COMPLETION**

8.2.1 By signing the Agreement Design Builder represents to University that the Contract Time is reasonable for performing the Work and that Design Builder is able to perform the Work within the Contract Time.

**8.3 DELAY**

8.3.1 Except and only to the extent provided otherwise in Articles 7 and 8 of the General Conditions, by signing the Agreement, Design Builder agrees to bear the risk of delays to the Work; and that Design Builder's Proposal for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of delays to the Work, Design Builder understands that, except and only to the extent provided otherwise in Articles 7 and 8 of the General Conditions, the occurrence of events that delay the Work shall not excuse Design Builder from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle the Design Builder to an adjustment of the Contract Sum.

**8.4 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY**

8.4.1 Subject to Article 8.4.2 below, the Contract Time will be extended for each day of delay for which Design Builder demonstrates that all of the following five conditions have been met; a time extension will not be granted for any day of delay for which Design Builder fails to demonstrate compliance with the five conditions:

.1 Condition Number One: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying Final Completion of the Work to a date that is beyond the Contract Time.

.2 Condition Number Two: Within 7 days of the date the Design Builder discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay is likely to have an impact on the critical path of the Project, (even if the Design Builder has not yet been delayed when the Design Builder discovers or reasonably should discover the critical path impact of the act, error, omission or unforeseen condition giving rise to the delay) the Design Builder submits a timely and complete Change Order Request that meets the requirements of Article 4.2 of the General Conditions.

.3 Condition Number Three: The delay is not caused by:

.1 A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 3.16 of the General Conditions; or

.2 The financial inability, misconduct or default of the Design Builder, a Subcontractor or supplier; or

.3 The unavailability of materials or parts; or

.4 An error or omission in the Contract Documents caused by Design Builder or Design Builder’s Design Consultants.

.4 Condition Number Four: The delay is caused by:

.1 Fire; or

.2 Strikes, boycotts, or like obstructive actions by labor organizations; or

.3 Acts of God (As used herein, “Acts of God” shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves); or

.4 A materially differing site condition pursuant to Article 3.16 of the General Conditions; or

.5 An error or omission in the Contract Documents caused by the University; or

.6 The University's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Design Builder; or

.7 The University's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design Builder; or

.8 The failure of the University (including the University acting through its consultants, Design Professionals, Separate Contractors or the University's Representative) to perform any Contract obligation unless such failure is due to Design Builder's default or misconduct.

.9 “Adverse weather“ but only for such days of adverse weather, or on-site conditions caused by adverse weather, that are in excess of the following number of days will be granted a Contract Time extension pursuant to Article 8.4 of the General Conditions:

Example 1 {If facility elects to specify days on a monthly basis}

 January - 6 days

 February - 6 days, etc.

Example 2 {If facility elects to specify a total number of days for the entire project}

 Total Number of days – 27 days

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 In order for a day to be considered a day of adverse weather for the purpose of determining whether Design Builder is entitled to an adjustment in Contract Time, both of the following conditions must be met:

.1 The day must be a day in which, as a result of adverse weather, less than one half day of critical path work is performed by Design Builder; and

.2 The day must be identified in the Contract Schedule as a scheduled work day.

.5 Condition Number Five: Contractor has taken all reasonable measures to avoid and minimize the delay and, notwithstanding such measures, the delay occurred.

8.4.2 If and only if a delay meets all five conditions prescribed in Article 8.4.1 above, then a time extension will be granted for each day that Final Completion of the Work is delayed beyond the Contract Time, subject to the following:

.1 When two or more delays (each of which meet all four conditions prescribed in Article 8.4.1 above) occur concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to this Article 8.4.2, such concurrent critical delays shall be treated as a single delay for each such day.

.2 Design Builder shall be entitled to a time extension for a day of delay that meets all five requirements of Article 8.4.1 above if the delay is concurrent with a delay that does not meet all five conditions of Article 8.4.1 above.

8.4.3 If for any reason one or more of the five conditions prescribed in Article 8.4.1 above is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time under Article 8.4.2 above.

**8.5 COMPENSATION FOR DELAY**

8.5.1 To the maximum extent allowed by law, any adjustment of the Contract Sum as the result of delays shall be limited to the amounts specified in Article 7 of the General Conditions. Such adjustment shall, to the maximum extent allowed by law, constitute payment in full for all delay related costs (including costs for disruption, interruption and hindrance, general conditions, on and off-site overhead and profit) of Design Builder, its Suppliers and Subcontractors of all tiers and all persons and entities working under or claiming through Design Builder in connection with the Project.

8.5.2 By signing the Agreement, the parties agree that the University is buying the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

.1 To order changes in the Work, regardless of the extent and number of changes, including without limitation:

.1 Changes to correct errors or omissions caused by University, if any, in the Contract Documents.

.2 Changes resulting from the University's decision to change the scope of the Work subsequent to execution of the Contract.

.3 Changes due to unforeseen conditions.

.2 To suspend the Work or any part thereof.

.3 To delay the Work, including without limitation, delays resulting from the failure of the University or the University's Representative to timely perform any Contract obligation and delays for University's convenience.

**ARTICLE 9**

**PAYMENTS AND COMPLETION**

**9.1 COST BREAKDOWN**

9.1.1 Within 10 days after receipt of the Notice of Selection as the apparent lowest responsible Bidder, and with the Agreement, Design Builder shall submit to University's Representative a Cost Breakdown of the Contract Sum. The Cost Breakdown shall itemize as separate line items the cost of each work activity and all associated costs, including but not limited to warranties, as-built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall equal the Contract Sum. The Cost Breakdown, when approved by the University's Representative, shall become the basis for determining the cost of Work performed for Design Builder’s Applications for Payment.

**9.2 PROGRESS PAYMENT**

9.2.1 University agrees to pay monthly to Design Builder, subject to Article 9.4.3 of the General Conditions, an amount equal to 95% of the sum of the following:

.1 Cost of the Construction Work in permanent place as of the date of the Design Builder’s Application For Payment.

.2 Cost of materials not yet incorporated in the Construction Work, subject to Article 9.3.5 of the General Conditions.

.3 Less amounts previously paid.

.4 During the Design Work, the University shall pay Design Builder monthly a uniform amount prorated, based on the Contract Time and Contract Sum associated with either Design Development or Construction Documents Phase.

Under this Article 9.2.1, University may, but is not required to, pay Design Builder more frequently than monthly.

9.2.2 After Substantial Completion and subject to Article 9.4.3 of the General Conditions, University will make any of the remaining progress payments in full.

**9.3 APPLICATION FOR PAYMENT**

9.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, Design Builder shall submit to University's Representative an itemized Application For Payment, for the cost of the Work in permanent place, as approved by University's Representative, which has been completed in accordance with the Contract Documents, less amounts previously paid.

9.3.2 Design Builder warrants that, upon submittal of an Application For Payment, all Work, for which Certificates For Payment have been previously issued and payment has been received from University, shall be free and clear of all claims, stop payment notices, security interests, and encumbrances in favor of Design Builder, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

**9.4 CERTIFICATE FOR PAYMENT**

 9.4.1 If Design Builder has submitted an Application For Payment in accordance with Article 9.3 above, University's Representative shall, not later than 5 working days after the date of receipt of the Application For Payment, issue to University, with a copy to Design Builder, a Certificate For Payment for such amount as University's Representative determines to be properly due.

9.4.2 If any such Application For Payment is determined not to be in accordance with Article 9.3 above, University will inform Design Builder as soon as practicable, but not later than 5 working days after receipt. Thereafter, Design Builder shall have 3 days to revise and resubmit such Application For Payment; otherwise University’s Representative may issue a Certificate For Payment in the amount that University’s Representative determines to be properly due without regard to such Application For Payment.

9.4.3 Approval of all or any part of an Application For Payment may be withheld, a Certificate For Payment may be withheld, and all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment on account of any failure of Design Builder to perform its obligations under the Contract Documents.

9.4.4 Subject to the withholding provisions of Article 9.4.3 of the General Conditions, University will pay Design Builder the amount set forth in the Certificate For Payment no later than 10 days after the issuance of the Certificate For Payment.

**9.5 BENEFICIAL OCCUPANCY**

9.5.1 University reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Construction Work at any time prior to Substantial Completion or Final Completion upon 10 days' notice to Design Builder. Such occupancy or use is herein referred to as “Beneficial Occupancy.” Beneficial Occupancy shall be subject to the following condition: Design Builder shall continue to maintain all insurance required by the Contract in full force and effect.

**9.6 SUBSTANTIAL COMPLETION**

9.6.1 “Substantial Completion” means the stage in the progress of the Construction Work, as determined by University's Representative, when the Construction Work is complete and in accordance with the Contract Documents except only for completion of minor items which do not impair University's ability to occupy and fully utilize the Construction Work for its intended purpose and a Certificate of Occupancy has been issued by the University.

9.6.2 When Design Builder gives notice to University's Representative that the Construction Work is substantially complete, unless University's Representative determines that the Construction Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, University's Representative will inspect the Construction Work. If the University’s Representative determines that the Construction Work is not substantially completed the University’s Representative will prepare and give to Design Builder a comprehensive list of items to be completed or corrected before establishing Substantial Completion. Design Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Design Builder to complete all Construction Work in accordance with the Contract Documents. Upon notification that the items on the list are completed or corrected, as applicable, the University's Representative will make an inspection to determine whether the Construction Work is substantially complete. Costs for additional inspection by University's Representative shall be deducted from any monies due and payable to Design Builder.

9.6.3 When University's Representative determines that the Construction Work is substantially complete, University's Representative will arrange for inspection by University’s Building Official and other officials, as appropriate, for the purpose of issuing a Certificate of Occupancy. After a Certificate of Occupancy has been issued by the University, the University’s Representative will prepare a Certificate of Substantial Completion on University's form as contained in the Exhibits, which, when signed by University, shall establish the date of Substantial Completion and the responsibilities of University and Design Builder for security, maintenance, utilities, insurance, and damage to the Construction Work.

9.6.4 The daily rate included in the Agreement and specifically identified as the rate to be paid to Design Builder for Compensable Delays shall not apply to any delays occurring after the Work is substantially completed

**9.7** **FINAL COMPLETION, FINAL PAYMENT, AND RELEASE OF RETENTION**

9.7.1 Upon receipt of notice from Design Builder that the Work is ready for final inspection, University's Representative will make such inspection. Final Completion shall be when University's Representative determines that the Work is fully completed and in accordance with the Contract Documents, including without limitation, satisfaction of all "punch list" items, and determines that a Certificate of Occupancy has been issued by the University. University will file a Notice of Completion within 15 days after Final Completion. After receipt of the final Application For Payment, if University's Representative determines that Final Completion has occurred, University's Representative will issue the final Certificate For Payment.

9.7.2 Final payment and retention shall be released to Design Builder, as set forth in Article 9.7.3, after:

.1 Design Builder submits the final Application For Payment and all submittals required in accordance with Article 9.3;

.2 Design Builder submits all guarantees and warranties procured by Design Builder from Subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents;

.3 Design Builder submits the Final Distribution of Contract Dollars in the form contained in the Exhibits; and

.4 University's Representative issues the final Certificate For Payment.

At its sole discretion, after Final Completion, University may waive the requirement that Design Builder submit a final Application For Payment before making final payment and/or release of retention to Design Builder.

9.7.3 Final payment shall be paid not more than 10 days after University's Representative issues the final Certificate For Payment. Retention shall be released to Design Builder 35 days after the filing of the Notice of Completion.

9.7.4 Acceptance of final payment by Design Builder shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by Design Builder as unsettled at the time of the final Application For Payment.

**ARTICLE 10**

**PROTECTION OF PERSONS AND PROPERTY**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

10.1.1 Design Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to employees and other persons who may be affected thereby, the Work and materials to be incorporated therein, and property at the Project site and adjoining property.

**10.2 EMERGENCIES**

10.2.1 In an emergency affecting the safety of persons or property, Design Builder shall act to prevent or minimize damage, injury, or loss. Design Builder shall promptly notify University's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and Design Builder's action.

**ARTICLE 11**

**INSURANCE AND BONDS**

**11.1 DESIGN BUILDER'S INSURANCE**

11.1.1 Design Builder shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and University from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Design Builder, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Supplementary Conditions. See Article 3.19 of the General Conditions regarding the scope and extent of Design Builder’s liability for repair of damaged Work.

11.1.2 The following policies and coverage shall be furnished by Design Builder:

.1 COMMERCIAL GENERAL LIABILITY INSURANCE subject to terms no less broad than the Insurance Services Office’s (ISO) form CG 0001 (2004 or later edition), or a substitute form providing coverage at least as broad as the ISO form specified, covering all Work done by or on behalf of Design Builder and providing insurance for bodily injury, wrongful death, personal injury, property damage, and contractual liability. There shall be no limitations or exclusions of coverage beyond those contained in the standard ISO form CG 0001 (2004 or later edition) Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work required of Design Builder by these Contract Documents. Design Builder shall continue to maintain Products/Completed Operations liability insurance coverage for a minimum completed operations period of 10 year(s) or the applicable Statute of Repose as provided by the law of the jurisdiction where the project is located as shown in the policy(ies), whichever is less. All terms and conditions of such coverage shall be maintained during this completed operations period, including the required minimum coverage limits and the requirement to provide the University with coverage as an additional insured for completed operations as specified under this Article 11.1.

|  |  |
| --- | --- |
|  |  |

.2 BUSINESS AUTOMOBILE LIABILITY INSURANCE subject to terms no less broad than the Insurance Services Office’s (ISO) form CA 0001 (1990 or later edition), or a substitute form providing coverage at least as broad as the ISO form specified, covering owned, hired, leased, and non-owned automobiles used by or on behalf of Insured, and providing liability insurance for bodily injury and property damage arising from the use or operation of such auto(s) with a minimum combined single limit of not less than $1,000,000 per accident. The minimum limits required may be satisfied by combination of primary and umbrella/excess policies. The Commercial Automobile Liability Insurance shall be provided by Design Builder for all on site and off site Work.

.3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE as required by Federal and State of California law. Design Builder shall also require all of its Subcontractors to maintain this insurance coverage.

|  |
| --- |
| Insurance required shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or  (ii) that are acceptable to the University.  Such insurance shall be written for not less than the following:  |

|  |  |  |
| --- | --- | --- |
|  | WORKER’S COMPENSATION AND EMPLOYER’S LIABILITY –  | Minimum Requirement |
|  | Worker’s Compensation: | (as required by Federal and State of California law) |
|  | Employer’s Liability:Each EmployeeEach AccidentPolicy Limit | $1,000,000$1,000,000$1,000,000 |

{SEE UC BUSINESS AND FINANCE BULLETIN BUS-63, AND FACILITIES MANUAL RD 1.3, FOR REQUIRED LIMITS OF INSURANCE; FACILITY SHALL OBTAIN ADVICE FROM THE CAMPUS RISK MANAGEMENT OFFICE IF MODIFYING LEVELS REQUIRED BY POLICY}

.4 PROFESSIONAL LIABILITY INSURANCE to insure its activities in connection with this Contract and shall obtain, keep in force, and maintain as required by the Supplementary Conditions. However, if the insurance under this Article 11.1.2.4 is written on a claims-made basis, it shall be maintained continuously for a period no less than three (3) years following termination of this Contract or Final Completion, whichever occurs later. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of this Contract and shall include, without limitation coverage for professional services as called for in this Contract.

.5 The Design Builder shall obtain, either itself or through the applicable Subcontractor(s) in use of drone(s)/Unmanned Aerial Vehicle(s) (UAV(s)) in the performance of their Work, either an endorsement for UAV Liability coverage to their Commercial General Liability insurance policy or separate Unmanned Aircraft System (UAS) insurance. Design Builder and/or Subcontractor shall maintain and show evidence of coverage pursuant to Article 11 while Work involving drone(s)/UAV(s) is being completed. The insurance required by this paragraph shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor’s or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor’s or Moody's).

Design Builder and/or Subcontractor in use of a drone/UAV in the performance of their Work shall meet all FAA requirements for certification and comply with all FAA rules for operation of the drone/UAV and any established University policy relating to operation of unmanned aircraft systems at University location.

Such UAV Liability coverage as provided by endorsement to the Commercial General Liability insurance policy, or the separate UAS insurance policy shall be written for not less than the following minimum limits:

|  |  |
| --- | --- |
| UAV / UAS INSURANCE - Limits of Liability  | Minimum Requirement |
| Each Loss | {$AMOUNT} |
|  |  |
| Policy Aggregate | {$AMOUNT} |

If UAV Liability coverage is provided by endorsement to the Commercial General Liability insurance policy, either the “Aircraft” exclusion must be deleted from the Commercial General Liability insurance policy or an exception to the “Aircraft” exclusion must be provided by the insurance company.

If a separate UAS insurance policy is provided, such policy must include coverage for Bodily Injury (Liability), Property Damage (Liability) and Physical Damage to the UAV and support systems. Design Builder and/or Subcontractor shall be required to also show evidence of the following under its UAS policy:

Such UAS insurance shall, by endorsement to the policies, also include the following:

.1 The Regents of the University of California and each of their Representatives, consultants, officers, agents, employees, and each of their Representative's consultants shall be included as additional insureds on a primary non-contributory basis.

.2 As to all liability insurance policies, each shall include a waiver of subrogation endorsement evidencing that the Design Builder and/or Subcontractor waives all rights of recovery by subrogation against University, University’s Representative, University’s Representative’s consultants, their respective officers, agents, or employees.

.3 If insurance policy providing coverage requires that each UAV be scheduled, the Design Builder and/or Subcontractor shall meet all reporting requirements of the insurance company to schedule insurance for the actual unit (drone/UAV) in use in the performance of their Work.

**{OPTIONAL** – THE FOLLOWING PROVISION IS INTENDED FOR PROJECTS INVOLVING HAZARDOUS MATERIALS, e.g. ASBESTOS ABATEMENT**}**

.6 The Design Builder shall obtain, either itself or through the applicable Subcontractor(s) performing Work involving hazardous materials, Contractor's Pollution Liability (CPL) insurance coverage for such Work AND an endorsement to either its CPL or Commercial Automobile Liability policies for transporting or hauling of hazardous materials. The insurance required by this paragraph 11.1.2.6 shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Such insurance shall be written for not less than the following minimum limits:

|  |  |
| --- | --- |
| CONTRACTOR'S POLLUTION LIABILITY - Limits of Liability  | Minimum Requirement |
| Each Loss | {$AMOUNT} |
|  |  |
| Policy Aggregate | {$AMOUNT} |
|  |   |

Such CPL insurance shall, by endorsement to the policies, also include the following:

.1 The Regents of the University of California and each of their Representatives, consultants, officers, agents, employees, and each of their Representative's consultants shall be included as additional insureds on a primary non-contributory basis.

.2 As to all liability insurance policies, each shall include a waiver of subrogation endorsement evidencing that the Contractor and/or Subcontractor waives all rights of recovery by subrogation against University, University’s Representative, University’s Representative’s consultants, their respective officers, agents, or employees.

.3 Except with respect to the limits of insurance, Contractor and Subcontractor required insurance shall apply separately to each insured or additional insured.

.4 Coverage for Emergency Response Costs, with a 72-hour minimum time frame.

.5 Coverage for Crisis Management, Public Relations Management or Equivalent.

.6 Coverage for Mold and Fungi.

.7 Coverage for transportation of hazardous materials.

.8 Coverage for non-owned hazardous material disposal sites.

If coverage is provided on an Occurrence form, Contractor and/or Subcontractor shall maintain and show evidence of coverage while Work involving hazardous materials is being completed, to include Completed Operations liability coverage for a minimum period of ten (10) years or the applicable Statute of Repose as provided by the law of the jurisdiction where the project is located as shown in the policy(ies), whichever is less. If coverage is provided on a Claims-Made form, Contractor and/or Subcontractor shall maintain and show evidence of coverage while Work involving hazardous materials is being completed, to include a ten (10)-year Extended Reporting Period from the completion of contracted services.

Coverage must extend to Transportation and Hauling of hazardous materials. The University shall require a copy of the policy endorsement noting extension of Transportation coverage. If this extension of coverage is not provided under the Contractor's or applicable Subcontractor's Contractor's Pollution Liability, then the Contractor/Subcontractor shall also be required to show evidence of the following under its Business Auto policy:

COMMERCIAL AUTO - Combined Single Limit per Accident of: {$AMOUNT}

Covering Transportation and/or Hauling and/or Disposing of hazardous materials by amending the pollution exclusion of ISO Form CA 00010 6/92 (or its equivalent) in the following manner:

1. Delete Section a. (1) a.: (Pollution) "being transported or towed away by, or handled for movement into, onto or from the Covered Auto."

2. Delete Section a. (1) b.: "Otherwise in the course of transit by the insured."

Coverage shall include MCS-90 endorsement and shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

* + 1. The coverages required under this Article 11 shall not in any way limit the liability of Design Builder.

11.1.4 Design Builder’s Certificates of Insurance, executed by a duly authorized representative of each broker of record or each insurer as evidence of the insurance required by these Contract Documents and on the form contained in the Exhibits, shall be submitted by Design Builder to University prior to the commencement of Work by the Design Builder. The Certificates of Insurance shall provide for no cancellation or modification of coverage without prior written notice to University, in accordance with policy provisions.

11.1.5 In the event Design Builder does not comply with these insurance requirements, University may, at its option, provide insurance coverage to protect University; and the cost of such insurance shall be paid by Design Builder and may be deducted from the Contract Sum.

11.1.6 Design Builder's insurance as required by Article 11.1.2 above, shall, by endorsement to the policies and the Certificates of Insurance, include the following:

.1 The Regents of the University of California, The University of California, University, and each of their Representatives, consultants, officers, agents, employees, and each of their Representative's consultants, regardless of whether or not identified in the Contract Documents or to the Contractor in writing, will be included as additional insureds on the Contractor’s General Liability insurance for and relating to the Work to be performed by the Contractor and Subcontractors. Additional Insured provision or endorsement shall be at least as broad as the CG 20 10 07 04 in combination with the CG 20 37 0704 (or earlier versions of CG 20 10 and CG 20 37 or Form B - CG 20 10 11 85 by itself), as published by Insurance Services Offices (ISO) and shall be included with Certificates of Insurance. The additional insured requirement shall not apply to Worker’s Compensation and Employer’s Liability insurance.

Further, the amount of insurance available to the University shall be for the full amount of the loss up to the available policy limits and shall not be limited to any minimum requirements stated in the Contract Documents.

.2 University, University's consultants, University's Representative, and University's Representative's consultants will not by reason of their inclusion as insureds incur liability to the insurance carriers for payment of premiums for such insurance.

.3 Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by University, University's consultants, University's Representative, and University's Representative's consultants. This provision, however, shall only apply as per the stipulations of Article 11.1.6.1 above.

.4 The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that would exist in the absence of the contract.

11.1.7 The form and substance of all insurance policies required to be obtained by Design Builder shall be subject to approval by University. The insurance required by 11.1.2.1, 11.1.2.2 and 11.1.2.4 shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Such insurance shall be written for not less than the following:

|  |  |  |
| --- | --- | --- |
|  |  | Minimum Requirement |
| 11.1.2.1 | Commercial General Liability Insurance-Limits of Liability |  |
| Each Occurrence-Combined Single Limit for Bodily Injury and Property | $ AMOUNT |
| Products-Completed Operations Aggregate | $ AMOUNT |
| Personal and Advertising Injury | $ AMOUNT |
| General Aggregate- | $ AMOUNT |
| 11.1.2.2 | Business Automobile Liability Insurance-Limits of Liability |  |
| Each Accident-Combined Single Limit for Bodily Injury and Property Damage | $ AMOUNT |
| 11.1.2.4 | Professional Liability – Limits of Liability |  |
|  | Each Occurrence | $ AMOUNT |
|  | General Aggregate | $ AMOUNT |
| The insurance required by 11.1.2.1 and 11.1.2.2 shall provide as follows: University, University’s officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to Design Builder in writing, will be included as additional insureds for and relating to the Work to be performed by Design Builder and Subcontractors. This requirement shall apply to claims, costs, injuries, or damages, but only in proportion to and to the extent such claims, costs, injuries, or damages are caused by or result from the negligent acts or omissions of Design Builder and Subcontractors. This requirement shall not apply to Worker’s Compensation and Employer’s Liability Insurance or to Professional Liability Insurance.Insurance required by Paragraph 11.1.2.3 shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or  (ii) that are acceptable to the University.  Such insurance shall be written for not less than the following:  |
| 11.1.2.3 | WORKER’S COMPENSATION AND EMPLOYER’S LIABILITY – Worker’s Compensation:  | (as required by Federal and State of California law). |

Employer’s Liability:

Each Employee $1,000,000

Each Accident $1,000,000

Policy Limit $1,000,000

11.1.8 If insurance company refuses to use the Certificate of Insurance form as contained in Exhibits, it must provide a Certificate of Insurance evidencing compliance with this Article including those provisions noted under DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES section of theCertificate of Insurance Exhibit by including an endorsement to its form covering those noted provisions exactly as they appear on the Certificate of Insurance Exhibit.

11.1.9 At the request of University, Design Builder shall submit to University copies of the policies obtained by Design Builder.

**11.2 BUILDER'S RISK PROPERTY INSURANCE**

11.2.1 If and only if the Lump Sum Base Proposal exceeds $300,000 at the time of award of the Contract, University will provide its standard builder's risk property insurance, subject to the deductibles, terms and conditions, exclusions, and limitations as contained in the provisions of the policy. A copy of the University's standard builder's risk property insurance policy is available at the University's Facility office. In addition, a summary of the provisions of the policy is included as an Exhibit to the Contract. Design Builder agrees that the University’s provision of its standard builder’s risk property insurance policy meets the University’s obligation to provide builder’s risk property insurance under the Contract and, in the event of a conflict between the provisions of the policy and any summary or description of the provisions contained herein or otherwise, the provisions of the policy shall control and shall be conclusively presumed to fulfill the University’s obligation to provide such insurance. The proceeds under such insurance policies taken out by University insuring the Construction Work and materials will be payable to University and Design Builder as their respective interests, from time to time, may appear. Design Builder shall be responsible for the deductible amount in the event of a loss. In addition, nothing in this Article 11.2 shall be construed to relieve Design Builder of full responsibility for loss of or damage to materials not incorporated in the Construction Work, and for Design Builder's tools and equipment used to perform the Work, whether on the Project site or elsewhere, or to relieve Design Builder of its responsibilities referred to under this Article 11. “Materials incorporated in the Work,” as used in this Article 11.2, shall mean materials furnished while in transit to, stored at, or in permanent place at the Project site.

**11.3 PERFORMANCE BOND AND PAYMENT BOND**

11.3.1 Design Builder shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Exhibits.

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the Lump Sum Base Proposal.

11.3.3 The Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by University.

11.3.4 Design Builder shall promptly furnish such additional security as may be required by University to protect its interests and those interests of persons or firms supplying labor or materials to the Work. Design Builder shall furnish supplemental Payment and Performance Bonds each in the amount of the current Contract Sum at the request of the University.

11.3.5 Surety companies used by Design Builder shall be, on the date the Contract is signed by University, listed in the latest published State of California, Department of Insurance list of “Insurers Admitted to Transact Surety Insurance in This State.”

11.3.6 The premiums for the Payment Bond and Performance Bond shall be paid by Design Builder.

**ARTICLE 12**

**UNCOVERING AND CORRECTION OF CONSTRUCTION WORK**

**12.1 UNCOVERING OF WORK**

12.1.1 If a portion of the Construction Work is covered contrary to University's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by University's Representative, be uncovered for University's Representative's observation and be replaced at Design Builder's expense without adjustment of the Contract Time or the Contract Sum.

**12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD**

12.2.1 The term "Guarantee To Repair Period" means a period of 2 years, unless a longer period of time is specified, commencing as follows:

.1 For any Construction Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.

.2 For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Article 9.5 of the General Conditions, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.

.3 For all Construction Work other than .1 or .2 above, from the date of Final Completion.

12.2.2 Design Builder shall (1) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period, and (2) replace, repair, or restore to University's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. Design Builder shall promptly commence such correction, replacement, repair, or restoration upon notice from University's Representative or University, but in no case later than 10 days after receipt of such notice; and Design Builder shall diligently and continuously prosecute such correction to completion. Design Builder shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such Defective Work.

12.2.3 Design Builder's obligations under this Article 12 are in addition to, and not in limitation of, its warranty under Article 3.4 of the General Conditions or any other obligation of Design Builder under the Contract Documents. Enforcement of Design Builder's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies University may have under the Contract Documents or at law or in equity for Defective Work.

**ARTICLE 13**

**TERMINATION OF THE CONTRACT**

**13.1 TERMINATION BY DESIGN BUILDER**

13.1.1 Subject to below Article 13.1.2, Design Builder shall have the right to terminate the Contract only upon University’s failure to perform any material obligation under the Contract Documents and to cure such default within 30 days, or University has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from Design Builder stating the nature of such default(s).

13.1.2 Upon the occurrence of one of the events listed in Article 13.1 above, Design Builder may, upon 10 days additional notice to University and University's Representative, and provided that the condition giving rise to Design Builder's right to terminate is continuing, terminate the Contract.

**13.2 TERMINATION BY UNIVERSITY FOR CAUSE**

13.2.1 University will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

.1 Design Builder becomes insolvent or files for relief under the bankruptcy laws of the United States.

.2 Design Builder makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

.3 A receiver is appointed to take charge of Design Builder's property.

.4 The commencement or completion of any Work activity on the critical path is more than 30 days behind the date set forth in the Contract Schedule for such Work activity as a result of an Unexcusable Delay. For a Contract with a Contract Time of less than 300 days, the 30-day period shall be reduced to the number of days commensurate with 10% of the Contract Time.

.5 Design Builder abandons the Work.

13.2.2 Upon the occurrence of any of the following events, University will have the right to terminate the Contract for cause if Design Builder fails to promptly commence to cure such default and diligently prosecute such cure within 5 days after notice from University, or within such longer period of time as is reasonably necessary to complete such cure:

.1 Design Builder persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.

.2 Design Builder fails to make prompt payment of amounts properly due Subcontractors after receiving payment from University.

.3 Design Builder disregards Applicable Code Requirements.

.4 Design Builder persistently or materially fails to execute the Work in accordance with the Contract Documents.

.5 Design Builder is in default of any other material obligation under the Contract Documents.

.6 Design Builder persistently or materially fails to comply with applicable safety requirements.

13.2.3 Upon any of the occurrences referred to in Articles 13.2.1 and 13.2.2 above, University may, at its election and by notice to Design Builder, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Design Builder; accept the assignment of any or all of the subcontracts; and then complete the Work by any method University may deem expedient.

**13.3 TERMINATION BY UNIVERSITY FOR CONVENIENCE**

13.3.1 University may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to Design Builder. Upon such termination, Design Builder agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of Design Builder, University shall pay Design Builder in accordance with Article 13.3.3 below.

13.3.2 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to Design Builder's obligations under Article 13.3.1 above, as to bona fide obligations assumed by Design Builder prior to the date of termination.

13.3.3 Upon such termination, University shall pay to Design Builder the sum of the amount of the Contract Sum allocable to the portion of the Work properly performed by Design Builder as of the date of termination, less sums previously paid to Design Builder.

The above payment shall be the sole and exclusive remedy to which Design Builder is entitled in the event of termination of the Contract by University pursuant to this Article 13.4; and Design Builder will be entitled to no other compensation or damages and expressly waives same.

**ARTICLE 14**

**STATUTORY AND OTHER REQUIREMENTS**

Design Builder shall perform the Work in accordance with laws, statutes, the most recent building codes, ordinances, rules, regulations, lawful orders, and policies of all public authorities having jurisdiction over Design Builder, University, or the Project, including, without limitation, any state orders or county orders pertaining to public health, and the following: ….

**14.1 NONDISCRIMINATION**

14.1.1 For purposes of this Article 14.1, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.1.2 Design Builder shall comply and shall ensure that all Subcontractors comply with Sections 12900 through 12996 of the State of California Government Code.

14.1.3 Design Builder agrees as follows during the performance of the Work:

.1 Design Builder shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994).  Design Builder will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above.  Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.  The Design Builder also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.  The Design Builder will, in all solicitations or advertisements for employees placed by or on behalf of the Design Builder, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994).  For purposes of this provision:  (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

.2 Design Builder and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by University or any appropriate agency of the State of California designated by University for the purposes of investigation to ascertain compliance with this Article 14.1.

**14.2 PREVAILING WAGE RATES**

14.2.1 For purposes of this Article 14.2, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.2.2 Design Builder shall comply and shall ensure that all Subcontractors comply with prevailing wage law pursuant to the State of California Labor Code, including but not limited to Section 1720 et seq. of the State of California Labor Code. Compliance with these sections is required by this Contract. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations.

14.2.3 The State of California Department of Industrial Relations has ascertained the general prevailing *per diem* wage rates in the locality in which the Construction Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing *per diem* wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. Design Builder shall post a copy of the general prevailing per diem wage rates as well as job site notices as prescribed by regulation at the job site. By this reference, such schedule is made part of the Contract Documents. Design Builder shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Design Builder in the execution of the Construction Work. Design Builder shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Construction Work. Design Builder shall forfeit to University, as a penalty, not more than $200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by Design Builder or any Subcontractor. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. Design Builder shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Construction Work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing *per diem* wage rate, an amount equal to the difference between the specified prevailing *per diem* wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to section 1742 of the California Labor Code.

**14.3 PAYROLL RECORDS**

14.3.1 For purposes of this Article 14.3, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.3.2 Design Builder and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual *per diem* wages paid to each journeyworker, apprentice, worker, or other employee employed in connection with the Construction Work. All payroll records shall be certified as being true and correct by Design Builder or Subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Design Builder on the following basis:

.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.

.2 A certified copy of all payroll records shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

.3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Design Builder or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Design Builder awarded the Contract or performing the Contract shall not be marked or obliterated.

14.3.3 Design Builder shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Design Builder shall inform University of the location of such payroll records for the Project, including the street address, city, and county; and Design Builder shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article 14.3 or with the State of California Labor Code Section 1776, Design Builder shall have 10 days in which to comply following receipt of notice specifying in what respects Design Builder must comply. Should noncompliance still be evident after the 10- day period, Design Builder shall forfeit to University, as a penalty, $100 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum.

**14.4 APPRENTICES**

14.4.1 For purposes of this Article 14.4, the term Subcontractor shall not include suppliers, manufacturers, and distributors.

14.4.2 Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Design Builder and Subcontractors as apprentices. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training and in accordance with prevailing wage law pursuant to the Labor Code, including but not limited to Section 1777.5. The Design Builder bears responsibility for compliance with this section for all apprenticeable occupations.

14.4.3 Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the Construction Work in the craft or trade to which the apprentice is indentured.

14.4.4 When Design Builder or Subcontractors employ workers in any apprenticeship craft or trade on the Work, Design Builder or Subcontractors shall 1) send contract award information to the applicable joint apprenticeship committee that can supply apprentices to the site of the public work, and 2) apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Design Builder or Subcontractors under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Construction Work. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than1 hour of **apprentice** work for every 5 hours of journeyperson work, except as permitted by law. Design Builder or Subcontractors shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices, or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee, or present an exemption certificate issued by the Division of Apprenticeship Standards.

14.4.5 “Apprenticeship craft or trade,” as used in this Article 14.4, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

14.4.6 If Design Builder or Subcontractors employ journeyworkers or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the area of the Project site are contributing, Design Builder and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeyworkers or apprentices on the Construction Work in the same amount or upon the same basis and in the same manner done by the other contractors. Design Builder may include the amount of such contributions in computing its Proposal for the Contract; but if Design Builder fails to do so, it shall not be entitled to any additional compensation therefore from University.

14.4.7 Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Design Builder or Subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.

**14.5 CONSTRUCTION WORK-DAY**

14.5.1 Design Builder shall not permit any worker to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Design Builder shall forfeit to University, as a penalty, $25 for each worker employed in the execution of this Contract by Design Builder, or any Subcontractor, for each day during which such worker is required or permitted to work more than 8 hours in any 1 day and 40 hours in any 1 calendar week in violation of the terms of this Article 14.5 or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. Design Builder and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of University, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

* 1. **PATIENT HEALTH INFORMATION (if applicable)**

Design Builder acknowledges that its employees, agents, subcontractors, consultants and others acting on its behalf may come into contact with Patient Health Information ("PHI") while performing work at the Project Site. This contact is most likely rare and brief (e.g. walking through a clinic where patient files may be visible, overhearing conversations between physicians while working or touring a hospital, noticing a relative or acquaintance receiving treatment in a University facility, etc.). Design Builder shall immediately notify University Representative of any such contact. Any and all forms of PHI should not be examined closer, copied, photographed, recorded in any manner, distributed or shared. Design Builder will adopt procedures to ensure that its employees, agents and subcontractors refrain from such activity. If Design Builder, its employees, agents or subcontractors do further examine, copy, photograph, record in any manner, distribute or share this information, Design Builder will report such actions immediately to the University Representative. Design Builder will immediately take all steps necessary to stop any such actions and will ensure that no further violations of this contractual responsibility will occur. Design Builder will report to University Representative within five (5) days after Design Builder gives University Representative notice of the event/action of the steps taken to prevent future occurrences.

**ARTICLE 15**

**MISCELLANEOUS PROVISIONS**

**15.1 GOVERNING LAW**

15.1.1 This Contract shall be governed by the laws of the State of California.

**15.2 SUCCESSORS AND ASSIGNS**

15.2.1 University and Design Builder respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

**15.3 SURVIVAL**

15.3.1 The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and University's right to audit Design Builder's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

**15.4 COMPLETE AGREEMENT**

15.4.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 7 of the General Conditions.

**15.5 EXECUTION OF AGREEMENT**

15.5.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed via a University approved digital signature process and shall have the same force and effect as the use of a manual signature

The University reserves the right to reject any digital signature unless it is unique to the person using it, capable of verification, created by public key cryptography or signature dynamics, and meets all requirements of California Government Code § 16.5 and California Code of Regulations 22000 through 22005

**15.6 UNIVERSITY'S RIGHT TO AUDIT**

15.6.1 University and entities and agencies designated by University will have access to and the right to audit and the right to copy at University's cost all of Design Builder's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Design Builder shall preserve all such records and other items during the performance of the Contract and for a period of at least 3 years after Final Completion.

**15.7        METHODS OF DELIVERY FOR SPECIFIED DOCUMENTS**

15.7.1   The following documents must be delivered in a manner specified in Article 15.7.2:

 .1 Design Builder Notices of election to litigate;

.2 Written demand for an informal conference to meet and confer pursuant to Article 4.5;

.3 University’s written statement identifying remaining disputes following informal conference pursuant to

 Article 4.6;

.4 Written demand for non-binding mediation pursuant to Article 4.6;

.5 Design Builder claims pursuant to Article 4.3;

.6 Design Builder notices of conditions pursuant to Article 3.16;

.7 University’s notices of Design Builder’s failure to perform and/or correct defective work pursuant to Articles 12.2 and 13.2.3;

               .8 University’s notice to stop work pursuant to Article 2.1:

               .9 Notices of termination pursuant to Article 13.

15.7.2  Delivery methods for documents specified in Article 15.7.1:

 .1 By personal delivery.

.2 Sent by facsimile copy where receipt is confirmed.

.3 Sent by Express Mail, or another method of delivery providing for overnight delivery where receipt is

confirmed.

.4 Sent by registered or certified mail, postage prepaid, return receipt requested.

15.7.3     The documents identified in Article 15.7.1 shall only be effective if delivered in the manner specified in Article 15.7.2.   Subject to the forgoing, such documents shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Delivery of the specified documents shall be made at the respective street addresses set forth in the Agreement. Such street addresses may be changed by notice given in accordance with this Article 15.6.

**15.8 TIME OF THE ESSENCE**

15.8.1 Time limits stated in the Contract Documents are of the essence of the Contract.

**15.9 UC FAIR WAGE**

Design Builder shall pay all persons providing construction services and/or any labor on site, including any University location, no less than the UC Fair Wage (defined as $15 per hour) and shall comply with all applicable federal, state and local working condition requirements.